

APPEAL NO. 172768
FILED JANUARY 17, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 16, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter, from August 25 through November 23, 2017.

The appellant (carrier) appealed the ALJ's determination. The carrier contends on appeal that the ALJ misstated the testimony of its witness. The claimant responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating of 15% or greater; the claimant has not commuted any portion of the impairment income benefits; the qualifying period for the eighth quarter of SIBs was from May 13 through August 11, 2017; that during the qualifying period for the eighth quarter of SIBs the claimant was unemployed or underemployed; and the minimum number of job search efforts required for the claimant's county of residence is five per week.

The claimant's theory of entitlement to SIBs for the eighth quarter is based on an active work search effort every week of the qualifying period in dispute.

28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least the following work search requirement each week during the entire qualifying period: (D) has performed active work search efforts documented by job applications. Rule 130.102(f) provides, in part, that as provided in subsection 130.102(d)(1)(C) and (D), regarding active participation in work search efforts and active work search efforts, an injured employee shall provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of job applications and/or work search contacts consistent with the work search contacts established by the Texas Workforce Commission (TWC) which are required for unemployment compensation in the injured employee's county of residence pursuant to the TWC Local Workforce Development Board requirements.

The ALJ found that the claimant contacted five potential employers during each week of the qualifying period for the eighth quarter, and that the claimant made an active effort to obtain employment during each week of the qualifying period for the eighth quarter. The ALJ stated the following in the Discussion:

[Ms. J] did an exhaustive review of [the] [c]laimant's job contacts during the qualifying period. Based upon responses from the individuals at the potential employers, the types of jobs applied for, and the location of the jobs . . . she opined that [the] [c]laimant had made an active effort to obtain employment during each week of the qualifying period.

However, a review of the record shows Ms. J, the carrier's vocational consultant, specifically testified at the CCH that the claimant is not qualified for the eighth quarter of SIBs "because he did not make an active job search effort for each and every week of the qualifying period." The ALJ's statement, upon which his determination that the claimant is entitled to SIBs for the eighth quarter is based, in part, is inconsistent with the testimony and constitutes a material misstatement of the evidence. Accordingly, we reverse the ALJ's determination that the claimant is entitled to SIBs for the eighth quarter and remand the issue of the claimant's entitlement to SIBs for the eighth quarter to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, a conclusion of law, and a decision supported by the evidence on whether the claimant is entitled to SIBs for the eighth quarter, from August 25 through November 23, 2017.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **GREAT MIDWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge